

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA**

STATE OF OKLAHOMA, *et al.*

Plaintiffs,

vs.

TYSON FOODS, INC., *et al.*

Defendants.

Case No. 05-CV-0329-GKF-SAJ

**GEORGE’S, INC.’S, AND GEORGE’S FARMS, INC.’S JOINDER IN CARGILL
DEFENDANTS’ MOTION TO STRIKE PLAINTIFFS’ “OMNIBUS MOTION”
(DOCKET #1271) REGARDING ESI DISCOVERY**

COMES NOW George’s, Inc. and George’s Farms, Inc. (hereinafter collectively “George’s”) and for their Adoption Of and Joinder in the Cargill Defendants’ Motion to Strike Plaintiffs’ “Omnibus Motion” Regarding ESI Discovery state as follows, to-wit:

**I. ADOPTION OF ARGUMENT OF CARGILL DEFENDANTS’ MOTION
TO STRIKE (DOCKET # 1279) PLAINTIFFS’ “OMNIBUS MOTION.”**

George’s agrees with the arguments and averments contained and set forth in the Cargill Defendants’ Motion to Strike Plaintiffs’ “Omnibus Motion.” As such, George’s hereby joins in and adopts as its own the statements, averments, arguments and authorities set forth at length in and in support of the Cargill Defendants’ **Motion to Strike Plaintiffs’ “Omnibus Motion” Regarding ESI Discovery** (Docket # 1279) and join the Cargill Defendants in requesting that this Court strike the Plaintiffs’ “Omnibus Motion.”

II. PLAINTIFFS MISREPRESENT AND MISCHARACTERIZE THE STATUS OF GEORGE'S DISCOVERY RESPONSES AND PRODUCTION OF DOCUMENTS.

Plaintiffs' allegations regarding George's production of documents misrepresent and mischaracterize the status of George's production and the character of that production. Plaintiffs' assert that "the State's review of Defendant's ESI production to date reveal that they are notably sparse as to ESI predating 2001." (Plaintiffs' Motion, ¶ 3, p. 3). While George's certainly cannot attest to what the other parties to this action may or may not have produced, a quick review of documents that have been produced to the Plaintiffs reveals that George's has produced *at least* 6,500 pages of documents containing ESI dating back as far as 1996. (*See* 1996: GE 24040 – GE 24312, GE 32256 – GE 32377; 1997: GE 23369 – GE 24039, GE 24313 – GE 25267; 1998: GE 25268 – 26871; 1999: GE 22905 – GE 23368, GE 26872 – GE 27628; 2000: 27629 – 28447, GE 31253 – GE 32255). These documents have been produced to the Plaintiffs in hard copy and TIFF images. These documents are self-explanatory, clear, and easy to understand.

Considering that the Plaintiffs' have not met and conferred or otherwise discussed or raised the allegation that documents produced by George's are not "in a reasonably usable format" prior to filing their Motion, it is quite difficult to respond to the allegations contained in Paragraph 10 of the Plaintiffs' Motion. A reading of Paragraph 3 and Paragraph 10 together indicates that the Plaintiffs actually seem not to know what has been produced, and George's therefore wonders how the argument can be made that it is not "reasonably usable." (Plaintiffs' Motion, ¶ 10, p. 6).

The most troubling aspect of the Plaintiffs' Motion is the misrepresentation contained in Paragraph 10, where the Plaintiffs' allege the following:

The George's Defendants reported on February 2, 2007 they were preparing to migrate from one system to another, thus making historical data dating from the mid-1990's on the old system non-accessible. Regardless of outstanding discovery requests from the State, the George's Defendants refused to provide the response ESI from this system prior to the information becoming inaccessible.

Again, the Plaintiffs' failed to raise this allegation with George's prior to filing the instant Motion. Had the Plaintiffs' attempted to discuss this with George's, they would have been informed that their representation of the February 2, 2007 meeting is incorrect.

The Plaintiffs were informed during the February 2, 2007 meet and confer that George's began migrating segments of various database systems from a mainframe, AS-400 system over to the Lawson system. The Plaintiffs were informed that this migration began in December, 2002. The Plaintiffs were told that the migration consisted of a beginning target date for each segment of the company's electronic information, along with keeping enough stored data accessible to perform necessary functions until sufficient time elapsed after migration that the old systems no longer needed to be accessed. The Plaintiffs were told that this migration/conversion to Lawson was completed in December, 2006. The Plaintiffs were further informed that the database information generally exists back to about 1996; that the information on the Lawson system would only go back to 2003-2006, depending on when the migration occurred for a business segment; and that records prior to the migration would reside on the AS-400 system from the time of migration back to around 1996. The Plaintiffs were told, and the Defendants have identified as such in its representations regarding ESI, that George's lacks the ability without considerable time and expense and lacks the knowledge base

within its current employees to access information on an old, obsolete mainframe system, and that the information was therefore not readily accessible.

These matters were clearly represented by George's at its initial meet and confer with Plaintiffs on ESI matters on February 2, 2007 and in subsequent follow-up discussions. The Plaintiffs have chosen to leave a misapprehension with the Court that George's had reasonable access to the AS-400 data in February, 2007 and chose to proceed in a manner that thereafter rendered the data inaccessible. This is simply not true.

The documents produced also reveal several thousand pages of printouts and information dating back to 1996 which was obtainable either in hard copy form or through George's report generator, Laser Vault. George's has never refused to provide ESI and has produced all of its ESI related to the Illinois River watershed, subject to a duty to supplement and ongoing efforts to obtain, review and produce "corporate knowledge" type information regardless of location. The documents produced to the Plaintiffs demonstrate that the information that Plaintiffs allege has not been produced actually has been produced in hard copy and TIFF images.

Additionally, in early discussions, including the February 2, 2007 meet and confer, George's advised that it would produce all of its ESI in hard copy format – including responsive electronic mail communications. After the April 27, 2007 hearing and the Opinion and Order (Docket # 115) issued following that hearing, counsel for George's re-evaluated its electronic mail production methods and decided – though never asked by the Plaintiffs to do so – to begin producing electronic mail in accordance with the protocol agreed upon by the Plaintiffs and the Cargill Defendants. That protocol calls for the production of TIFF images and a searchable metadata file. Plaintiffs correctly

note that a similar protocol is also being utilized by Peterson Farms, Inc. George's has now provided the Plaintiffs with TIFF images of responsive electronic mail along with a load file that contains the metadata by bates number.

Plaintiffs also correctly note that there was a vendor error that resulted in the production of images and the metadata without bates numbers. As promised, George's has now remedied this error and one can easily look at the metadata and link a particular entry of interest to the images provided. The Plaintiffs fail to actually provide examples of why they are having difficulties accessing the information desired or why the information provided is less usable than another format or otherwise inaccessible.

III. Conclusion

The Plaintiffs' allegations about the manner in which documents have been provided and extent of documents provided are unfounded. First, Plaintiffs allege that ESI production prior to 2001 is "sparse." As demonstrated herein and reflected in the documents and images provided to the Plaintiffs, George's has produced at least 6,500 pages of documents containing ESI dating back as far as 1996. Second, Plaintiffs' claim – without any explanation – that what has been produced is not "in a reasonably usable format." The ESI produced by George's is clear, understandable, and more than easily understood and used. Third, Plaintiffs erroneously assert that George's does not have data from the mid-1990s and that George's "refused" to provide such information. As discussed herein, this is a misrepresentation of what was explained to the Plaintiffs during the February 2, 2007 meet and confer and a mischaracterization of the documents that the plaintiffs have been provided. Finally, they allege – again without appropriate explanation – that they have difficulties understanding and using the electronic mail

production. The electronic mail production conforms with the agreement between the Cargill Defendants and the Plaintiffs, and not until the instant motion did George's hear of any complaints – other than relating to the now remedied vendor error – regarding the manner of that production. The Plaintiffs' allegations are meritless and should be stricken. Plaintiffs have presented no evidence showing or otherwise suggesting that George's has failed to comply with the Federal Rules of Civil Procedure.

WHEREFORE, PREMISES CONSIDERED, George's respectfully requests that this Court strike Plaintiffs' omnibus "motion" as improper and that in the event an actual prayer for relief is asserted that this Court deny that prayer for relief and further request any and all other relief to which this Court may find George's entitled including costs of responding to the Plaintiffs' Motion.

Respectfully submitted,

/s/ James M. Graves

Gary V. Weeks
James M. Graves (OB #16657)
Paul E. Thompson, Jr.
BASSETT LAW FIRM LLP
221 North College Avenue
P.O. Box 3618
Fayetteville, AR 72702-3618
(479) 521-9996
(479) 521-9600 Facsimile

And

Randall E. Rose (OB #7753)
The Owens Law Firm, P.C.
234 West 13th Street
Tulsa, OK 74119
(918) 587-0021
(918) 587-6111 Facsimile

*Attorneys for Defendants George's Inc.
and George's Farms, Inc.*

CERTIFICATE OF SERVICE

I certify that on the 25th of September, 2007, I electronically transmitted the attached document to the following ECF registrants:

W. A. Drew Edmondson, Attorney General	drew_edmondson@oag.state.ok.us
Kelly Hunter Burch, Assistant Attorney General	kelly_burch@oag.state.ok.us
J. Trevor Hammons, Assistant Attorney General	trevor_hammons@oag.state.ok.us
Robert D. Singletary, Assistant Attorney General	robert_singletary@oag.state.ok

Douglas Allen Wilson	doug_wilson@riggsabney.com,
Melvin David Riggs	driggs@riggsabney.com
Richard T. Garren	rgarren@riggsabney.com
Sharon K. Weaver	sweaver@riggsabney.com
Riggs Abney Neal Turpen Orbison & Lewis	

Robert Allen Nance	rnance@riggsabney.com
Dorothy Sharon Gentry	sgentry@riggsabney.com
Riggs Abney	

J. Randall Miller	rmiller@mkblaw.net
David P. Page	dpage@mkblaw.net
Louis W. Bullock	lbullock@mkblaw.net
Miller Keffer & Bullock	

Elizabeth C. Ward	lward@motleyrice.com
Frederick C. Baker	fbaker@motleyrice.com
William H. Narwold	bnarwold@motleyrice.com
Motley Rice	

COUNSEL FOR PLAINTIFFS

Stephen L. Jantzen	sjantzen@ryanwhaley.com
Patrick M. Ryan	pryan@ryanwhaley.com
Paula M. Buchwald	pbuchwald@ryanwhaley.com
Ryan, Whaley & Coldiron, P.C.	

Mark D. Hopson	mhopson@sidley.com
Jay Thomas Jorgensen	jjorgensen@sidley.com
Timothy K. Webster	twebster@sidley.com
Sidley Austin LLP	

Robert W. George	robert.george@kutakrock.com
Michael Bond	michael.bond@kutakrock.com
Kutak Rock LLP	

COUNSEL FOR TYSON FOODS, INC., TYSON POULTRY, INC., TYSON CHICKEN, INC.; AND COBB-VANTRESS, INC.

R. Thomas Lay
Kerr, Irvine, Rhodes & Ables

rtl@kiralaw.com

Jennifer S. Griffin
Lathrop & Gage, L.C.

jgriffin@lathropgage.com

COUNSEL FOR WILLOW BROOK FOODS, INC.

Robert P. Redemann
Lawrence W. Zeringue
David C. Senger

rredemann@pmrlaw.net
lzingue@pmrlaw.net
dsenger@pmrlaw.net

Perrine, McGivern, Redemann, Reid, Berry & Taylor, PLLC

Robert E. Sanders
E. Stephen Williams
Young Williams P.A.

rsanders@youngwilliams.com
steve.williams@youngwilliams.com

COUNSEL FOR CAL-MAINE FOODS, INC. AND CAL-MAINE FARMS, INC.

A. Scott McDaniel
Nicole Longwell

smcdaniel@jpm-law.com
nlongwell@jpm-law.com

COUNSEL FOR PETERSON FARMS, INC.

John R. Elrod
Vicki Bronson
Conner & Winters, P.C.

jelrod@cwlaw.com
vbronson@cwlaw.com

Bruce W. Freeman
D. Richard Funk
Conner & Winters, LLLP

bfreeman@cwlaw.com

COUNSEL FOR SIMMONS FOODS, INC.

John H. Tucker
Colin H. Tucker
Theresa Noble Hill
Rhodes, Hieronymus, Jones, Tucker & Gable

jtuckercourts@rhodesokla.com
chtucker@rhodesokla.com
thillcourts@rhodesokla.com

Terry W. West
The West Law Firm

terry@thewestlawfirm.com

Delmar R. Ehrich
Bruce Jones
Krisann Kleibacker Lee
Dara D. Mann
Faegre & Benson LLP

dehrich@faegre.com
bjones@faegre.com
klee@faegre.com
dmann@faegre.com

COUNSEL FOR CARGILL, INC. AND CARGILL TURKEY PRODUCTION, LLC

Michael D. Graves
D. Kenyon Williams, Jr.

mgraves@hallestill.com
kwilliams@hallestill.com

COUNSEL FOR POULTRY GROWERS

William B. Federman
Jennifer F. Sherrill
Federman & Sherwood

wfederman@aol.com
jfs@federmanlaw.com

Teresa Marks
Charles Moulton
Office of the Attorney General

teresa.marks@arkansasag.gov
charles.moulton@arkansasag.gov

**COUNSEL FOR THE PLAINTIFFS OF ARKANSAS AND THE ARKANSAS NATURAL
RESOURCES COMMISSION**

I also hereby certify that I served the attached documents by United States Postal Service,
proper postage paid, on the following who are not registered participants of the ECF System:

C. Miles Tolbert
Secretary of the Environment
Plaintiffs of Oklahoma
3800 North Classen
Oklahoma City, OK 73118
COUNSEL FOR PLAINTIFFS

Thomas C. Green
Sidley Austin Brown & Wood LLP
1501 K Street NW
Washington, DC 20005
**COUNSEL FOR TYSON FOODS, INC.,
TYSON POULTRY, INC., TYSON
CHICKEN, INC.; AND COBB-VANTRESS,
INC.**

/s/ James M. Graves
James M. Graves